

FARRIS MATHEWS BRANAN
BOBANGO HELLEN & DUNLAP PLC RECEIVED

ATTORNEYS AT LAW

MEMPHIS DOWNTOWN
One Commerce Square, Suite 2000
Memphis, Tennessee 38103
Telephone 901-259-7100
Facsimile 901-259-7150

HISTORIC CASTNER-KNOTT BUILDING
618 CHURCH STREET, SUITE 300
NASHVILLE, TN 37219

(615) 726-1200 telephone
(615) 726-1776 facsimile

2005 AUG 16 MEMPHIS EAST 57
1100 Ridgeway Loop Road, Suite 400
Memphis, Tennessee 38120
Telephone 901-259-7120
Facsimile 901-259-7180
T.R.A. Docket No. 04-00381

Kristi Stout
kstout@farrismathews.com

Reply to
Nashville Office

August 16, 2005

Chairman Ron Jones
Attn. Sharla Dillon
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, Tennessee 37243-0505

VIA HAND DELIVERY


RE: Rebuttal Testimony of Wanda G. Montano on Behalf of SECCA (*In re. BellSouth's Petition to Establish Generic Docket to Consider Amendments to Interconnection Agreements Resulting from Changes of Law*, Docket No. 04-00381)

Dear Chairman Jones.

Please find enclosed an original and 13 copies of the above referenced rebuttal testimony. Please date and stamp a copy for our records. Thank you for your assistance regarding this matter. If you have any questions, or if I may be of further assistance, please do not hesitate to contact me.

Very truly yours,

FARRIS MATHEWS BRANAN
BOBANGO HELLEN & DUNLAP, PLC



Kristi Stout

1 **BEFORE THE TENNESSEE REGULATORY AUTHORITY**
2 **NASHVILLE, TENNESSEE**

3 **IN RE:**)
4 **BELLSOUTH'S PETITION TO ESTABLISH**)
5 **GENERIC DOCKET TO CONSIDER**) **DOCKET NO. 04-00381**
6 **AMENDMENTS TO INTERCONNECTION**)
7 **AGREEMENTS RESULTING FROM CHANGES**)
8 **OF LAW**)

9
10 **REBUTTAL TESTIMONY OF WANDA G. MONTANO ON BEHALF OF**
11 **SOUTHEASTERN COMPETITIVE CARRIERS ASSOCIATION**
12

13 **Q: PLEASE STATE YOUR NAME, TITLE, AND BUSINESS ADDRESS FOR**
14 **THE RECORD.**

15
16 **A:** My name is Wanda G. Montano. I am currently Vice President, Regulatory and
17 Industry Affairs for US LEC Corp., the parent company of US LEC of Tennessee
18 Inc. ("US LEC"), and its operating subsidiaries. My business address is 6801
19 Morrison Boulevard, Charlotte, North Carolina 28211.

20
21 **Q: ARE YOU SUBMITTING REBUTTAL TESTIMONY ON BEHALF OF US**
22 **LEC?**

23
24 **A:** No, I am also testifying on behalf of the Southeastern Competitive Carriers
25 Association, which is a party to the proceeding. I am currently the President of
26 SECCA. However, one of SECCA's members, XO Communications Services,

1 Inc. ("XO Communication"), has chosen to present its own witness for rebuttal
2 testimony in this docket.¹

3
4 **Q: HAVE YOU REVIEWED THE PROPOSED REBUTTAL TESTIMONY OF**
5 **KRISTEN SHULMAN ON BEHALF OF XO COMMUNICATIONS?**

6
7 **A:** Yes, I have. To the extent that I do not testify on the matters addressed in her
8 testimony, I support her testimony and concur with her analysis.

9 **Q: PLEASE SUMMARIZE YOUR EDUCATIONAL BACKGROUND AND**
10 **PROFESSIONAL EXPERIENCE.**

11
12 **A:** I joined US LEC in January 2000. Prior to that, I was employed in various
13 positions by Teleport Communications Groups ("TCG") and then by AT&T
14 following AT&T's acquisition of TCG. In 1998-1999, I served as General
15 Manager for North and South Carolina (Sales Executive) for AT&T (Charlotte,
16 NC). During 1997 – 1998 I was Vice President & Managing Executive for North
17 & South Carolina (Sales and Operation Executive) for TCG (Charlotte, NC).
18 During 1995-1997, I was Director of Process Reengineering for TCG (Staten
19 Island, NY). During 1992-1994, I was Director of Marketing for TCG (Staten
20 Island, NY). During 1990-1992, I was Senior Product Manager for Graphnet
21 (Teaneck, NJ). From 1982 – 1990, I was Regulatory Manager for Sprint
22 Communications Corp. in Reston, Virginia and, from 1979 – 1982, I was a

¹ In addition, XO Communication has not had the opportunity to review Ms. Montano's testimony contained in this filing, and therefore, takes no position on this testimony as of the date of filing.

1 paralegal for GTE Service Corporation in Washington, D.C. I have a B.S. from
2 East Carolina University in Greenville, NC (1974). I received my Paralegal
3 Certificate from the University of Maryland in 1980 and I received my M.B.A. in
4 Marketing & Government Affairs from Marymount University of Virginia in
5 1988.

6
7 **Q: WHAT IS THE PURPOSE OF YOUR REBUTTAL TESTIMONY?**

8
9 **A:** The purpose of my testimony is to respond to certain direct testimony propounded
10 by BellSouth's witnesses in this docket. Specifically, I will address matters
11 testified to by Kathy K. Blake and Pamela A. Tipton, but only as such testimony
12 addresses loops and dedicated transport. I will not address those portions of the
13 issues that pertain to access to "unbundled switching."

14
15 **Q: WHAT PORTIONS OF MS. BLAKE'S TESTIMONY DO YOU WISH TO**
16 **RESPOND?**

17
18 **A:** I will address Ms. Blake's statement that BellSouth was not sponsoring witness
19 testimony to address Issues 7 and 21 because there is general agreement between
20 BellSouth and the CLECs that there are no "active" disputes (Blake Direct
21 Testimony, Page 4, Lines 16 – 19) and her discussion on the transition period for
22 high capacity loops and dedicated transport (Blake Direct Testimony (Issue 32),
23 Page 16, Lines 19 – 24).

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

**Q: DO YOU DISAGREE WITH MS. BLAKE’S TESTIMONY ON EITHER
ISSUE 7 OR ISSUE 21?**

A: No, but as set forth in a letter filed in this proceeding on July 22, 2005, on behalf of XO Communications and SECCA, I do want to remind the Commission that Issue 7 on the Joint Issue Matrix filed with the Commission on June 29, 2005 is the subject, among other issues, of a petition for reconsideration filed by a number of CLECs, including XO Communications and US LEC, in *the Matter of Unbundled Access to Network Elements/Review of Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, WC Docket No. 04-313/CC Docket No. 01-338 (the “TRRO Docket”). There is also a pending forbearance petition filed in the TRRO Docket that may impact the parties’ rights and obligations for unbundled access to high capacity loops and dedicated transport, and the FCC is seeking comments on the petition no later than September 12, 2005. Although SECCA agrees that, for purposes of this hearing, Issue 7 may be withdrawn from the issues in this arbitration, SECCA does not want its agreement to withdraw the issue to prejudice its rights to negotiate a change of law provision and arbitrate the issue, in the event BellSouth and any member of SECCA is unable to come to an agreement, should the FCC grant either all or a portion of the petition for reconsideration or the forbearance petition.

1 **Q: HOW DO YOU DIFFER WITH MS. BLAKE’S STATEMENTS ABOUT**
2 **THE TRANSITION PERIOD?**

3
4 **A:** Ms. Blake states that “the CLECs apparently believe they are only required to
5 submit orders before March 10, 2006 ... and not complete other steps necessary to
6 effectuate a smooth transition...” (Blake Direct Testimony (Issue 32), Page 16,
7 Lines 19 – 20). The issue on the submission of orders, is not that SECCA
8 believes that we may wait until March 10, 2006 to submit the necessary orders or
9 conversion spreadsheets – although the dates on which BellSouth wants such
10 orders and spreadsheets is much too aggressive – rather, it is the date on which the
11 “conversion rates” become effective that is of more importance. Regardless of
12 when the conversion spreadsheets are submitted and processed, BellSouth must
13 continue to lease the “embedded base” circuits to CLECs, until March 10, 2006,
14 at the transition rates adopted by the FCC. The transition period rules, as adopted
15 by the FCC, state that the embedded base of UNEs that are subject to the
16 transition period ending March 10, 2006 “shall be available for lease from the
17 ILEC at a rate equal to the higher of either 115 percent of the rate the requesting
18 carrier paid for the dedicated element on June 15, 2004, or 115 percent of the rate
19 the state commission has established or establishes, if any, between June 16, 2004
20 and [March 11, 2005].” This language is found in Sections 51.319(a)(4)(iii) (DS1
21 Loops); 51.319(a)(5)(iii) (DS3 Loops); 51.319(e)(2)(ii)(C) (dedicated DS1
22 transport); and, 51.319(e)(2)(iii) (dedicated DS3 transport) BellSouth should not
23 be permitted to change the pricing on the circuits as of the date the conversion

1 spreadsheets are submitted or any time prior to March 10, 2006, as such change in
2 rates is contrary to the FCC's rules identified above.

3
4 **Q: WHAT PORTIONS OF MS. TIPTON'S TESTIMONY DO YOU WANT TO**
5 **RESPOND?**

6
7 **A:** I wish to respond to Ms. Tipton's testimony on the transition period process for
8 high capacity loops and dedicated transport (Tipton Direct Testimony, (Issue 2),
9 Page 9, Lines 13 – 18, and Pages 10 – 11, Line 25 and 1 – 3), the determination of
10 when a wire center is considered "not impaired" (Tipton Direct Testimony (Issue
11 5(b), Pages 27 – 37), and the concept that once BellSouth issues a "no
12 impairment" wire center list, the CLEC loses its right to "self-certify" as establish
13 under paragraph 234 of the TRRO (Tipton Direct Testimony (Issue 5(c)), Page
14 36, Lines 23 – 25). .

15
16 **Q: WHAT ARE YOUR COMMENTS TO MS. TIPTON'S TESTIMONY ON**
17 **THE TRANSITION PERIOD PROCESS?**

18
19 **A:** My response is that same as to that of Ms. Blake's testimony. Ms. Tipton
20 discusses, in more detail, the conversion process for high capacity loops and
21 dedicated transport. Similar to Ms. Blake's testimony, Ms. Tipton discusses
22 BellSouth's proposal that the CLECs provide conversion orders to BellSouth no
23 later than December 9, 2005 and, if the orders are not so submitted, then

1 BellSouth unilaterally would do the work for the CLEC and charge the CLEC.
2 Again, the issue is, although the dates seem much too aggressive, SECCA wants
3 BellSouth's agreement that the rate increase will not occur until March 10, 2006,
4 regardless of when the orders are submitted.
5

6 **Q: HOW DO YOU DISAGREE WITH MS. TIPTON'S TESTIMONY ON THE**
7 **PROCESS TO DETERMINE "NO IMPAIRMENT" WIRE CENTERS?**
8

9 **A:** BellSouth continues to address the decision as to which wire centers are "not
10 impaired" as a determination that BellSouth may make without any verification or
11 agreement by the CLEC. SECCA disagrees that the FCC intended to allow the
12 ILEC the unilateral decision to look at its data and then issue a list. The FCC
13 adopted a threshold standard for non-impaired wire center "based upon objective
14 and readily obtainable facts." If the data upon which BellSouth rests its decision
15 that certain wire centers are "non-impaired," and BellSouth has appropriately
16 applied the definitions of the FCC's TRRO decision, then, a CLEC upon
17 inspection of the data, should be able to easily agree with BellSouth. The fact that
18 BellSouth wants to unilaterally make the decisions and refuses to agree that the
19 parties must come to a mutual agreement on the lists or have the Commission
20 resolve the dispute, makes SECCA suspect that the BellSouth may not have
21 applied the data accurately.
22

1 David Wallis of Deloitte Financial Advisory Services, LLP submitted testimony
2 on behalf of BellSouth to offer into evidence two reports prepared by Deloitte &
3 Touche (“Deloitte”) setting forth Deloitte’s conclusions of its review of
4 BellSouth’s mathematical calculation of BellSouth’s Business Line Counts
5 (Direct Testimony of David Wallis, Exhibits DW-1 and DW-2). Deloitte,
6 however, states that

7 We neither verified the accuracy or completeness of the
8 source data obtained for the calculation of the business
9 lines, nor the systems in which the business lines are
10 captured (and the source data that was extracted). We did
11 not validate BellSouth’s methodology developed to
12 calculate the business lines for FCC TRRO purposes. We
13 obtained an understanding of BellSouth’s methodologies, a
14 set of its applicable data, and then replicated the
15 mathematical calculation utilized by BellSouth to
16 determine the number of business lines for BellSouth wire
17 centers. We did not attempt to validate the definitions of
18 “business lines” used by BellSouth. (Exhibit DW-1, Page 2;
19 Exhibit DW-2, Page 2).

20
21 Consequently, it appears that no third party entity has had an opportunity
22 to determine whether BellSouth’s underlying data supports BellSouth’s
23 assertion that its identified wire centers meet the threshold standards or
24 not. SECCA urges the Commission to either reject BellSouth’s proposal
25 that it may merely place a list of “non-impaired” wire centers on a website
26 and eliminate unbundled access to applicable UNEs.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

Q: WERE YOU SURPRISED BY MS. TIPTON’S TESTIMONY THAT ONCE BELLSOUTH LISTED A WIRE CENTER AS “NON-IMPAIRED,” THE CLEC WOULD LOSE ITS RIGHTS TO SELF-CERTIFY AS SET FORTH IN PARAGRAPH 234 OF THE TRRO?

A: Yes, I was. In reviewing Exhibit PAT –1 (Attachment 2) attached to Tipton Direct Testimony, proposed Section 1.8 (page 4) provides:

Prior to submitting an order pursuant to this Agreement for high capacity (DS1 or above) Dedicated Transport or high capacity Loops, <<customer_short_name>> shall undertake a reasonably diligent inquiry to determine whether <<customer_short_name>> is entitled to unbundled access to such Network Elements in accordance with the terms of this Agreement. By submitting such an order, <<customer_short_name>> self-certifies that to the best of <<customer_short_name>> ‘s knowledge, the high capacity Dedicated Transport or high capacity Loop requested is available as a Network Element pursuant to this Agreement. Upon receiving such order, BellSouth shall process the request in reliance upon <<customer_short_name>>’s self-certification.

BellSouth, however, has proposed additional language for each of these Network Elements. For example Exhibit PAT-1, Attachment 2, Page 10 proposed Section 2.1.4.9, provides:

1 Once a wire center exceeds both of the thresholds set forth in
2 Section 2.1.4.5.1 and 2.1.4.5.2 below, no future DS1 Loop
3 unbundling will be required in that wire center.
4

5 From Ms. Tipton's testimony, it appears that BellSouth's proposal in Section 1.8
6 was intended to provide the CLECs a false sense of security that the CLEC may
7 continue to order UNEs in a wire center in which the CLEC disagrees with
8 BellSouth's data, when BellSouth apparent intent was to eliminate the CLEC's
9 right to self-certify with the issuance of a wire center list. SECCA cannot agree to
10 the inclusion of any language in the body of Attachment 2 that would prevent a
11 CLEC from provisioning UNEs in wire centers that, based on reasonable due
12 diligence, it believes are impaired, regardless of BellSouth's unilateral
13 conclusions.
14

15 **Q: DOES THIS COMPLETE YOUR REBUTTAL TESTIMONY?**
16

17 **A: Yes.**
18